

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Butler

Serial No.: 10/749,259

Confirmation No.: 8566

Filed: December 31, 2003

For: Using Excess Levels of Metal Salts  
to Improve Properties when  
Incorporating Polymers in Asphalt

§ Atty. Dkt. No.: COS-890

§  
§ Group Art Unit: 1713

§  
§ Cust. No.: 25264

§  
§ Examiner: Mulcahy

§  
§ Appeal No.: 2008-2800

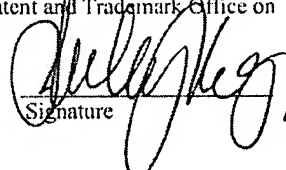
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§

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Honorable Commissioner:

CERTIFICATE OF EFS-WEB TRANSMISSION 37 CFR 1.8	
I hereby certify that this correspondence is being EFS- Web transmitted to the Patent and Trademark Office on the date below.	
Date	Signature
2/11/2009	

**PETITION TO WITHDRAW THE HOLDING OF  
ABANDONMENT UNDER 37 C.F.R. §1.181(a)**

This is a Petition to withdraw the Holding of Abandonment dated January 14, 2009. A Board Decision was rendered on August 29, 2008 in the above referenced case. The time for filing the Notice of Appeal (or further action with the USPTO) to the U.S. Court of Appeals for the Federal Circuit is two months from the date of the decision of the Board of Patent Appeals and Interferences. *See*, 37 C.F.R. §1.304. Accordingly, the Examiner issued a Notice of Abandonment on January 14, 2008.

However, Applicants filed a Request for Reconsideration of the Board Decision on September 10, 2008 (within the required time limit). Section 1.304 further states that if a request for rehearing or reconsideration of the decision is filed within the time period, the time for filing an appeal (or further USPTO action) shall expire two months after action on the request. The Board issued a decision on the Request for Reconsideration on December 23, 2008. Accordingly, the application is not abandoned until February 23,

2009. Therefore, Applicants respectfully petition to withdraw the holding of abandonment issued January 14, 2009.

No fee is believed required with this submission.

Respectfully submitted,

  
Tenley R. Krueger

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## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,259	12/31/2003	James R. Butler	COS-890	8566

25264 7590 01/14/2009  
 FINA TECHNOLOGY INC  
 PO BOX 674412  
 HOUSTON, TX 77267-4412

**Docketed:**

2-14-09  
Petition to Reexamine

EXAMINER

MULCAHY, PETER D

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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01/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

RECEIVED  
 JAN 29 2009  
 FTI LEGAL DEPARTMENT

<b>Notice of Abandonment</b>	Application No.	Applicant(s)	
	10/749,259	BUTLER ET AL.	
	Examiner	Art Unit	
	Peter D. Mulcahy	1796	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_, but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
  
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
  
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
  
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
  
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
  
6. ☒ The decision by the Board of Patent Appeals and Interference rendered on 29 August 2008 and because the period for seeking court review of the decision has expired and there are no allowed claims.
  
7. ☐ The reason(s) below:

/Peter D. Mulcahy/  
Primary Examiner, Art Unit 1796

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.